IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMM. FOR JUDGMENT NO. 734 OF 2003

In

SUMM.SUIT NO.2051 OF 2003

Mrs Laxmiben Vasant Patke .. Plaintiff

versus

Mr Yogesh Kanjibhai Chandan .. Defendant

...

Mr. O.S.Kutty for Plff

Mr. J.G.Shukla i.b Mr G.H.Shukla for Deft

CORAM : D.G. KARNIK, J

DATED : 5th May 2005.

P.C.

1. Heard learned counsel for the plaintiff and the defendant. Learned counsel for the defendant prays for time to file the affidavit in reply. Learned counsel for the plaintiff objects to it stating that the Summons for Judgment was served on the defendant on 25th July, 2003 and for a period of more than 1 year and 9 months as against the statutory period of 10 days the defendant has not filed the affidavit in reply. In view of this, request of the learned counsel for the defendant for time to file the affidavit in reply is

rejected.

2. Learned counsel for the plaintiff hands in the original documents alongwith the list. The documents are taken on record and collectively marked Exhibit A. I have perused the plaint and the documents on record. For valuable consideration the defendant issued a cheque for Rs.1,00,000/- in favour of the plaintiff on 30th August, 2002. The cheque when presented for payment was dishonoured. The plaintiff issued notice to the defendant on 23rd September, 2002 but the defendant failed to reply or comply. The original cheque, office copies of the notice and the acknowledgment are filed on record. In the absence of any affidavit in reply the averments made in the plaint are deemed to be accepted. The plaintiff has claimed interest from 1st April, 2001. However, the cheque was issued on 30th August, 2002. The plaintiff would be entitled for the interest from 30th August, 2002 and not
earlier date. Claim for interest is therefore reduced to Rs.27,000/- from Rs.39,402/- as claimed in the plaint. In the absence of any affidavit in reply the plaintiff is entitled to a decree under Order 37 Rule 3 (6) of the Code of Civil Procedure. Hence, Summons for Judgment is made absolute and suit of the plaintiff is

decreed as under :

" The defendant shall pay to the plaintiff a sum of Rs.1,27,000/- together with interest on the principal sum of Rs.1,00,000/- at 9 % p.a. from the date of suit till payment and all costs of the suit. "

D.G.KARNIK, J